

EXHIBIT A

Transcript of Steven J. Shapiro, Ph.D
Conducted on October 30, 2018

1 (1 to 4)

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK
3
4 - - - - - x
5 STEVEN B. BARGER, Plaintiff,
6 v. Civil Action No.
7 FIRST DATA CORPORATION, et al.,
8 Defendant.
9
10 - - - - - x
11
12 Deposition of
13 STEVEN J. SHAPIRO, PH.D.
14 New York, New York
15 Tuesday, October 30, 2018
16 9:32 a.m.
17
18
19
20
21
22 Job No.: 213997
23 Pages: 1 - 44
24 Reported By: Nancy Mahoney, CCR/RPR
25

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2 ON BEHALF OF PLAINTIFF BARGER:
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11 ON BEHALF OF DEFENDANT FIRST DATA:
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17 Lockwood Place
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20 410.332.8600
21
22 ALSO PRESENT:
23 Joseph T. Gardemal, III
24
25

1 Deposition of STEVEN J. SHAPIRO, PH.D., held at
2 the offices of:
3
4
5 Saul Ewing Arnstein & Lehr LLP
6 1270 Avenue of the Americas
7 New York, New York 10020
8 212.980.7200
9
10
11 Pursuant to agreement, before Nancy Mahoney,
12 Notary Public in and for the state of New York.
13
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2
1 C O N T E N T S
2 EXAMINATION OF STEVEN J. SHAPIRO, PH.D. PAGE
3 By Mr. Eidelman 5
4
5
6 E X H I B I T S
7 (Attached to transcript)
8
9 STEVEN J. SHAPIRO, PH.D. PAGE
10
11 Exhibit 1 Expert Report of Steven J. 6
12 Shapiro, Ph.D., Bates stamp SBB-002084
13 through 2132
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2 (5 to 8)

1 PROCEEDINGS
 2 STEVEN J. SHAPIRO, PH.D.,
 3 after having been first duly sworn or affirmed to
 4 testify to the truth, was examined and
 5 testified as follows:
 6 EXAMINATION BY COUNSEL FOR THE DEFENDANT
 7 FIRST DATA BY GARY EIDELMAN:
 8 Q Good morning, Dr. Shapiro. Can you please
 9 state your full name for the record.
 10 A It's Steven, first name Steven with a v,
 11 middle initial J, last name Shapiro.
 12 Q Good morning again, Dr. Shapiro. My name
 13 is Gary Eidelman. I'm a lawyer at Saul Ewing
 14 Amstein & Lehr. We had an opportunity to greet
 15 each other before the deposition began this
 16 morning.
 17 Along with me today is my colleague Mike
 18 Cianfichi from Saul Ewing, and also Joseph T.
 19 Gardemal, III who is our expert who is with
 20 Alvarez & Marsal, and Shawn Shearer is here as
 21 well for Mr. Barger.
 22 Since you've likely had your deposition
 23 taken many times before, is it okay if I dispense
 24 with the rules or do you need me to give them to
 25 you?

1 A I think I'll be fine on that.
 2 Q Very good. I appreciate that.
 3 (Exhibit 1 Expert Report of Steven J.
 4 Shapiro, Ph.D., Bates stamp SBB-002084 through
 5 2132 marked for identification and attached to the
 6 transcript.)
 7 Q Showing you what's been marked as
 8 Deposition Exhibit 1, Shapiro Exhibit 1. Can you
 9 identify that for me, please.
 10 A Yes. This is the report that I prepared
 11 in this case on September 28th of this year.
 12 Q Am I correct that this document has a
 13 number of Bates numbers in actually all four
 14 corners, that Bates numbers SBB-002084 through
 15 208 -- excuse me, 2090 constitute your opinion.
 16 Is that right?
 17 A Well, it would be in terms of the text.
 18 Q In terms of the text, correct.
 19 A It does not include exhibits.
 20 Q Correct. And then the exhibits begin on
 21 SBB-002091, and they continue through 2110?
 22 A That's correct.
 23 Q And then following that, beginning on
 24 002111 continuing through 2127 is your CV.
 25 A I do not have a copy of my CV attached to

5
 6 this.
 7 Q Oh, you don't? Then we should get that.
 8 (A recess was taken.)
 9 BY MR. EIDELMAN:
 10 Q Am I correct that in Exhibit 1 that Bates
 11 002111 to 2127 is your CV?
 12 A Yes.
 13 Q And that 2128 to 2132 is your schedule of
 14 testimony from January 2014 to the present?
 15 A Yes.
 16 Q Very good. Thank you.
 17 Dr. Shapiro, when were you retained by the
 18 plaintiff to produce an expert report in this
 19 matter?
 20 A I don't have my records in front of me,
 21 but, to the best of my recollection, it was in
 22 17 early September of this year.
 23 Q Did you charge the plaintiff for your
 24 services?
 25 A Yes, I did.
 26 Q And what were your fees?
 27 A \$400 per hour for the time involved in
 28 preparing a report.
 29 Q How many hours did you spend?
 30 A Roughly -- again, I don't have my billing

6
 7 records in front of me but roughly six hours.
 8 Q So the work product that's in front of me
 9 cost approximately \$2,400?
 10 A I believe that's correct.
 11 Q Were you assisted in preparing this report
 12 by anyone?
 13 A No.
 14 Q On page 2 of your report and page 3 of
 15 your report corresponding to Bates 2085 and 2086,
 16 there is the sources that you relied upon.
 17 Am I correct?
 18 A Yes.
 19 Q Were any other materials considered by you
 20 in preparing this report?
 21 A Other than the documents listed on Bates
 22 002085 and 002086, there are other secondary data
 23 sources that I also referenced and they are
 24 mentioned in footnotes -- or cited in footnotes, I
 25 should say, throughout the report.
 26 Q Did you speak to the plaintiff,
 27 Mr. Barger, in connection with preparing the
 28 report?
 29 A No.
 30 Q Did you speak with Mr. Shearer in
 31 connection with preparing the report?

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3 (9 to 12)

1 A I believe so, yes.

2 Q Did he provide you with any factual
3 information for you to use in preparing your
4 report?5 A The only factual information I believe
6 would have been things such as date of birth,
7 Mr. Barger's background, and then the documents
8 and bullet points on pages 00 -- sorry, Bates 0 --
9 let's try again, Bates 002085 through 002086 were
10 provided to me by Mr. Shearer.11 Q Did you review the plaintiff's testimony
12 from his deposition in this case?

13 A No.

14 Q Why not?

15 A It was not provided to me.

16 Q Is that something that you normally ask
17 for?18 A What I normally ask for would be documents
19 that would be relevant to preparing an analysis of
20 lost compensation. In a matter like this,
21 sometimes I'm provided depositions of the
22 plaintiff; other times I'm not.23 Q But you didn't ask for the deposition of
24 the plaintiff?

25 A No.

9

11 1 example, discounting future losses to present
2 value depending on legal standards in the
3 jurisdiction in which one is doing an analysis or
4 it might be interest accruing to past losses, and
5 that's in order to get a present value of the
6 losses.7 Since typically losses consist of a past
8 income stream and a future income stream,
9 typically in a matter, damages would be the
10 present value of the income stream but for the
11 event -- I'll use the phrase "event" that's the
12 subject of litigation, less any actual income
13 stream that's being earned since that time, if
14 there is such an income stream.15 Q Do you believe that one needs to be an
16 expert witness in order to calculate present value
17 of income?18 A Does one need to be an expert? Well,
19 that's a hard question to answer. I mean -- and
20 the reason I say that is I think relying on -- in
21 a court setting relying on lay people to do it,
22 number one. Number one, even though yes, it does
23 involve algebra and arithmetic -- and I'll be the
24 first to concede that point, which I realize
25 you're kind of getting to in your question --

10

12 1 nonetheless, I have -- I have seen lawyers, for
2 example, do the calculations themselves and
3 dispense with an expert, and the calculations can
4 be shaky; there could be issues with what's
5 assumed in terms of the particular investment
6 vehicle as well.

7 Q Okay. Thank you. Thank you.

8 We went through it earlier that your CV --
9 excuse me, your expert report also includes a
10 table of the cases that you've testified in
11 from -- effective January of 2014.12 Have any opponents in any litigation
13 matter in which you have worked sought to have
14 your opinions excluded?

15 A Yes.

16 Q Can you name those cases for me? Are they
17 on this chart which is the tail end of your expert
18 report beginning on 2128?19 A I do not see any of them on here because
20 it would have been prior to 2014.21 Q What was that case or cases, if you
22 recall?23 A One was Simmons versus Simmons, a divorce
24 action in Connecticut. I was retained by
25 Connecticut counsel to -- I was asked to generate1 Q What professional standards did you follow
2 in performing the production of this expert
3 report?4 A Best way I could put it is just following
5 standards that would be used by an economist
6 preparing an analysis of lost compensation.7 Q I read in your introduction to your report
8 that you are the past president of the National
9 Association of Forensic Economists, or NAFE.

10 A Yes.

11 Q Is that right?

12 A That is correct.

13 Q And that you are still an executive editor
14 of the Journal of Forensic Economics?

15 A That's correct.

16 Q What is forensic economics?

17 A Forensic economics would be the
18 application of economics to matters involving
19 litigation.20 Q And in utilizing those procedures or
21 processes, are there certain methods and protocols
22 that are followed in conducting such analyses?23 A Well, I think in general terms there are
24 in terms of -- based on peer-reviewed literature
25 in the field that one would be normally, for

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5 (17 to 20)

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	17	19
1 A I believe that I was typing away and that 2 "and" should have been a period before "health 3 benefits."	1 calculate the lost value of the health benefits 2 that Mr. Barger supposedly was receiving, correct? 3 A Yes.	
4 Q Before health benefits or after health 5 benefits?	4 Q And, in fact, you used an average of 5 health benefits based on a report which you list 6 in Exhibit 5 -- excuse me, in footnote 5, right?	
6 A Well, compensation would have included 7 base salary, annual bonuses and health benefits, 8 period.	7 A That's correct.	
9 Q And health benefits, period. So the "and" 10 can go before there. Got it.	8 Q Those are not the actual health benefits 9 that would have been incurred at First Data 10 anyway, right; this is just an average number that 11 you used?	
11 Where did you obtain the information 12 regarding Mr. Barger's base salary in preparing 13 your report?	12 A That's correct.	
14 A I believe that would have been -- that 15 would have been from communications from 16 Mr. Shearer, and I believe that was also addressed 17 in the June 12th, 2014 letter from Joe Plumeri of 18 First Data Corporation which was basically the 19 offer of employment. I believe that may have been 20 also on the pay stubs that I referenced also. I 21 don't have them in front of me.	13 Q If you had believed that Mr. Barger was in 14 fact getting health benefits from First Data, why 15 would you have not asked what the value of those 16 benefits were in order to create an accurate 17 report?	
22 Q And so you were calculating your damages 23 based on compensation which included base salary, 24 annual bonuses. Did you obtain annual bonus 25 information from the same series of documents,	18 A If I could get those values, I would have 19 used them. It's been my experience, though, in 20 doing litigation many times the employer cost of 21 those benefits isn't available when I'm preparing 22 a report. If it were, I would rely on it.	
1 both the offer letter as well as the pay 2 statements?	23 Q Well, did you ask anyone for them?	
3 A Pay statements and also there were 4 summaries that were also -- there was a 5 compensation summary as well as summaries that 6 showed stock grants to Mr. Barger as well.	24 A I just asked Mr. Shearer for whatever 25 documents related to compensation that he had that	
7 Q You also indicate that you were 8 calculating damages based on lost health benefits?	18	20
9 A Yes.	1 had been produced in the case.	
10 Q Where did you obtain information that 11 Mr. Barger was obtaining health benefits from 12 First Data?	2 Q Did Mr. Shearer tell you that Mr. Barger 3 was getting health benefits from First Data?	
13 A I believe I obtained that from 14 Mr. Shearer. I don't remember if that's listed in 15 the compensation summary or not.	4 A Yes.	
16 Q Are you aware that Mr. Barger elected not 17 to take health benefits while employed at First 18 Data?	5 Q Would it have been helpful for you to know 6 that Mr. Barger had elected not to take health 7 insurance benefits from First Data in preparing 8 your report of alleged damages that he suffered?	
19 A No, I was not.	9 A Yes.	
20 Q Would that change your calculations if it 21 was determined that Mr. Barger had elected not to 22 take health benefits from First Data?	10 Q If Mr. Barger had not in fact taken health 11 benefits, am I correct that the calculation of 12 health benefits that you included in your expert 13 report would be valued at zero?	
23 A As I'm sitting here right now, I don't 24 know the answer to that.	14 A That's correct.	
25 Q Well, you calculated -- in your report you	15 Q Going back to page 3 of your expert 16 report, in the what I think is now the second full 17 paragraph under Paragraph 3a of Damages, Lost 18 Compensation, you wrote, "I have prepared 19 calculations of Mr. Barger's losses under the 20 separate assumptions that at the time of 21 termination he would have worked an additional 22 five years and that he would have worked an 23 additional ten years at First Data."	
	24 Did I read that correctly?	
	25 A That's correct.	

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6 (21 to 24)

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	21	23
1 Q What is your basis for determining that 2 Mr. Barger would have worked for an additional 3 five years?		1 look at average unemployment rates to more 2 effectively calculate what the anticipated work 3 period would have been for Mr. Barger?
4 A I was asked to assume that in preparing my 5 report. When I say assume that, assume that range 6 of years going forward from his termination date.	5	4 A I'm not sure what you mean by average 5 unemployment rate. Average for whom?
7 Q So you were told to assume two periods of 8 time, that he would have worked for five years or 9 that he would have worked for ten years?	6	6 Q Unemployment tables dictating how long 7 somebody is typically out of work for in that 8 industry. Would that not have been an appropriate 9 measure to look at in calculating the period of 10 time that Mr. Barger may have suffered damages?
10 A That's correct.	11	11 A No, I don't believe so.
11 Q And who told you to assume that?	12	12 Q Are you familiar with work life expectancy 13 tables?
12 A Mr. Shearer.	13	14 A Yes, I am.
13 Q Did you consider any other periods of time 14 to do your calculation? Why not 20 years?	15	15 Q Is that something that you use in your 16 work?
15 A No, I did not.	16	17 A I have used them in my work.
16 Q What documents did you review to support 17 your opinion that Mr. Barger would have worked for 18 another five years?	18	18 Q Is that something that is used in 19 accordance with the protocols of peer-reviewed 20 literature?
19 A I did not review any documents.	21	21 A In peer-reviewed literature they are used, 22 although there are also experts who have problems 23 with the work life expectancy tables.
20 Q So I take it you that didn't review any 21 documents to support your opinion that Mr. Barger 22 would have worked for an additional ten years?	24	24 Q Do you have you problems with the work 25 life expectancy tables?
23 A That's correct.	22	24
24 Q Am I correct that in your analysis you are 25 assuming that Mr. Barger who was 72-and-a-half		
1 years at the time of termination would continue to 2 work for First Data for an additional five years 3 through age 77-and-a-half?	1	1 A No, I do not.
4 A That's correct.	2	2 Q Would it have been appropriate to use a 3 work life expectancy table in this case for a 4 plaintiff who was age 72-and-a-half at the time of 5 termination in calculating damages?
5 Q Did you look at any empirical data or 6 labor force-related documents to support this 7 assumption that he would have worked for an 8 additional five years?	6	6 A I'm not sure about that because, again, 7 that work life expectancy table assumes -- makes 8 assumptions that an individual fits the average 9 pattern for someone of that age group, A, being 10 alive; and B, being part of the labor force. And 11 it doesn't factor in, for example, motivation.
9 A No, I did not.	12	12 I mean, Mr. Barger was not a young man 13 when he took this job on, and if I went by work 14 life expectancy tables, he's already above 15 average, so to speak, in terms of taking on a 16 responsible position like that at the age he did 17 since he was -- you know, since he had not been 18 there very long; he was roughly 70 years old when 19 he started that job.
10 Q Doesn't that mean that your damages 11 analysis is purely speculative and unsupported but 12 basically just a calculation on Mr. Shearer's 13 order to you to calculate damages at five years 14 and ten years?	20	20 Q So is it your testimony -- I want to 21 understand your testimony. Is it your testimony 22 because he was motivated to work that it would not 23 have been appropriate to look at work life 24 expectancy tables?
15 A I don't think it's speculative. I was 16 asked to assume that. I don't know what 17 additional evidence Mr. Shearer is going to have 18 at trial concerning that.	25	25 A I'm just suggesting that work life
19 Q Well, what evidence he has at trial, would 20 that affect your expert report? Would that affect 21 your expert opinion if he presented other 22 information at trial?		
23 A Well, it would affect the reasonableness 24 of the range of years going forward.		
25 Q Would it have been appropriate for you to		

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<p>25</p> <p>1 expectancy tables for someone who's motivated like 2 him, who has not retired, might understate -- 3 potentially understate his work life expectancy 4 going forward.</p> <p>5 Q Would that be the case for somebody who 6 contracted cancer while he was employed at that 7 age? Wouldn't that mitigate towards using work 8 life expectancy tables for somebody who was not in 9 good health?</p> <p>10 A For someone who was not in good health, I 11 would be very leery of using life expectancy 12 tables because, again, to impute the length of 13 time working would require medical expertise that 14 I don't have as an economist.</p> <p>15 Q But it would be okay to just estimate 16 damages out to ten years for somebody who, you 17 know, had a bout of cancer and also had a previous 18 heart attack; it's appropriate in your estimation 19 to just calculate dates of five years and ten 20 years without relying on any empirical data?</p> <p>21 A Yes, it is. I mean, again, I'm assuming 22 that Mr. Shearer will have other information that 23 I don't have that would support that.</p> <p>24 Q So what other information would you need 25 in order to modify your report in any way that</p>	<p>27</p> <p>1 information is, and then I could make an 2 assessment of that.</p> <p>3 Q If you would have considered that 4 Mr. Barger was terminated in a subsequent 5 reduction in force or that he was replaced, would 6 that impact your damages calculation?</p> <p>7 A Well, if I made that assumption, yes, it 8 would.</p> <p>9 Q It would shorten the periods of time for 10 which you calculated damages?</p> <p>11 A If I made that assumption, it would, yes.</p> <p>12 Q Did you consider Mr. Barger's medical 13 history when you terminated his work life -- when 14 you completed your calculations?</p> <p>15 A No, I did not.</p> <p>16 Q In fact, your work life expectancy wasn't 17 derived from a table but it was Mr. Shearer's 18 direction to you to use work life expectancy of 19 five years and work life expectancy of ten years?</p> <p>20 A That's correct.</p> <p>21 Q Could I have performed the analysis that 22 you did in calculating what Mr. Barger's damages 23 would have been at five years?</p> <p>24 MR. SHEARER: Objection:</p> <p>25 A If you followed all the steps here and I</p>
<p>26</p> <p>1 would otherwise help support your conclusions here 2 that Mr. Barger would have worked for an 3 additional five years or that he would have worked 4 for an additional ten years? What information 5 don't you have that you think is going to be 6 produced at trial?</p> <p>7 A As I'm sitting here, I don't know the 8 answer to that.</p> <p>9 Q Did you consider the risk or possibility 10 that Mr. Barger could have been terminated in a 11 subsequent reduction in force in calculating the 12 five-year or the ten-year period of time for 13 damages?</p> <p>14 A No, I did not.</p> <p>15 Q Were you aware of the fact that Mr. Barger 16 was involved in the search for his successor as 17 early as October of 2014?</p> <p>18 MR. SHEARER: Objection.</p> <p>19 A No, I was not.</p> <p>20 Q Would that have impacted your analysis if 21 Mr. Barger was involved in the search for his 22 successor or determining a period of damages of 23 five years?</p> <p>24 A As I'm sitting here, I do not know the 25 answer to that. I would have to see what that</p>	<p>28</p> <p>1 guess if you're comfortable with doing a present 2 value analysis and you're comfortable with getting 3 the various interest rate measures and applying 4 them and setting up the appropriate spreadsheet, 5 the answer would be yes.</p> <p>6 Q On page 4 of your expert report in the top 7 paragraph, you wrote as follows -- and I believe 8 it is the second full sentence, "I have also 9 prepared calculations of loss under the assumption 10 that, in the absence of termination, Mr. Barger 11 receives the same base salary that he was earning 12 at the time of his termination over the remainder 13 of his employment at First Data and that his 14 annual bonuses equal \$250,000 in cash as specified 15 in his offer of employment."</p> <p>16 Do you see that?</p> <p>17 A Yes.</p> <p>18 Q Why do you believe that it was appropriate 19 to assume that Mr. Barger's variable compensation 20 for the remainder of his employment would have 21 equaled his initial variable compensation of 22 \$250,000?</p> <p>23 A I included that only because -- there was 24 a very short historical period over which he 25 worked at First Data, and the \$250,000 was</p>

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9 (33 to 36)

	33		35
1	damages calculation?	1	A No, I did not.
2	A Well, if I assumed a bonus of \$174,000,	2	Q Is your assumption that Mr. Barger's base
3	obviously the losses would be lower.	3	salary and variable compensation would have
4	Q Back on page 4 of your report, and this is	4	increased 2.5 percent per year for the remainder
5	the last paragraph before we get to number 1. You	5	of his employment consistent with the economic
6	wrote, "I have also prepared calculations of loss	6	evidence that you reviewed in this case?
7	that assume that Mr. Barger would have received	7	A Best answer I could give you is that we
8	salary increases if he had remained employed at	8	only had a very short period of time in which --
9	First Data with bonuses that reflect historic	9	in which we have any empirical evidence, and going
10	bonus activity from 2014 to 2016 or an annual	10	forward -- and going forward I was attempting,
11	\$250,000 bonus that increases over time."	11	assuming a longer term horizon where he's employed
12	Did I read that correctly?	12	there, to include the average salary increase that
13	A Yes.	13	a professional would be getting on a long-term
14	Q Did Mr. Barger's base salary ever increase	14	basis based on historical statistics.
15	during his tenure at First Data?	15	Q What historic statistics did you rely on
16	A It was my understanding it had not.	16	as opposed to the economic data in this case to
17	Q What is the basis for your assumption that	17	determine that he would have gotten a two and a
18	Mr. Barger would have received salary increases?	18	half percent increase in his base and in his
19	A Well, the basis for that assumption is	19	incentive compensation?
20	that if one were computing a loss going forward	20	A I looked at the average salary increases
21	either five or ten years, that to assume -- I	21	based upon the employment cost index for wages and
22	think it would have been speculative to just	22	salaries for managers in private industry over the
23	assume that his compensation would never have	23	period from 2001 to 2017.
24	grown in the future. And by preparing the range	24	Q But I just want to go back to my question
25	of compensation numbers that I did, I've covered	25	which I really don't think you answered, which is:
	34		36
1	the case where, in fact, it doesn't grow as well	1	Is there any economic data in this case --
2	as the case where it does grow.	2	although you call it a short time period -- but is
3	Q But the facts that you had before you,	3	there any economic data in this case that supports
4	which are not speculative, that in 2014 his base	4	your assumption that his base salary would have
5	compensation was \$480,000, correct?	5	increased 2.5 percent a year for the remainder of
6	A That's correct.	6	his -- of the damages period?
7	Q In 2015 his base compensation was	7	A Going back to the previous question, I
8	\$480,000, correct?	8	misunderstood your question. I thought you were
9	A That's correct.	9	asking me if there was evidence outside of the
10	Q In 2016 his base compensation was	10	case.
11	\$480,000, correct?	11	Q No. What I'm asking you now is: With
12	A That's correct.	12	respect to this case and the data that you
13	Q And at the beginning of 2017, his base	13	reviewed in this case, the data that you reviewed,
14	compensation was \$480,000, correct?	14	which is reflected on pages 2 and 3, is there any
15	A That itself.	15	15 economic evidence in this case that supports your
16	Q During that entire time period, there was	16	16 assumption that Mr. Barger's base salary and
17	no increase in his base compensation, correct?	17	17 variable compensation would have increased
18	A That's correct.	18	18 2.5 percent per year for the remainder of his
19	Q Did you speak with anybody at First Data	19	19 employment?
20	to determine whether or not there's any basis for	20	MR. SHEARER: Objection.
21	you to conclude that his compensation would have	21	A No, because the data covers a short period
22	increased over time?	22	of time in which his salary had not grown.
23	A No, I did not.	23	Q And that short period of time is from 2014
24	Q Did you review any documents to validate	24	2017, correct?
25	this assumption?	25	A Yes.

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	41		43
1	Q Have you ever mitigated lost wages when	1	ACKNOWLEDGMENT OF DEPONENT
2	calculating damages in prior disputes?	2	
3	A Yes.	3	I, STEVEN J. SHAPIRO, PH.D., do hereby
4	Q Why is this case different?	4	acknowledge that I have read and examined the
5	A Well, this case is different only because	5	foregoing testimony, and the same is a true,
6	he's tried to mitigate operating a consulting	6	correct and complete transcription of the
7	business, and based on the evidence that I had, it	7	testimony given by me and any corrections appear
8	isn't profitable.	8	on the attached Errata sheet signed by me.
9	Q Your --	9	
10	A Let me finish.	10	
11	I have had other cases where individuals	11	
12	became self-employed post-termination, did earn	12	(Date) _____ (Signature)
13	profits, did earn income from those businesses,	13	
14	and if they were positive -- those were positive	14	
15	income streams, then I have included them as	15	
16	mitigation.	16	
17	Q Your damages calculation is effective as	17	
18	of when?	18	
19	A It's effective -- I was asked to value	19	
20	everything as of -- as of the beginning of 2019,	20	
21	end of 2018.	21	
22	Q Your report was prepared at the end of	22	
23	September of 2018, correct?	23	
24	A That's correct.	24	
25	Q Did you ask for information on what	25	
	42		44
1	Mr. Barger's earnings had been for the first nine	1	C E R T I F I C A T E
2	months of 2018 to determine whether or not he was	2	
3	turning a profit in his consulting business would	3	I, Nancy Mahoney, Certified Court Reporter and
4	have impacted the mitigation analysis that you	4	Registered Professional Reporter and Notary Public
5	did?	5	within and for the State of New York, the officer
6	A No, I did not.	6	before whom the foregoing deposition was taken, do
7	Q Why not?	7	hereby certify that the foregoing transcript is a
8	A My experience with people operating	8	true and correct record of the testimony given;
9	Schedule C small businesses is that generally you	9	that said testimony was taken by me
10	don't know that until you compile everything at	10	stenographically and thereafter reduced to
11	the end of the year. Certainly if his	11	typewriting under my direction; that reading and
12	circumstances were to change based on a 2018 tax	12	signing was requested; and that I am neither
13	filings, then I would have to consider that in	13	counsel for, related to, nor employed by any of
14	amending my report.	14	the parties to this case and have no interest,
15	MR. EIDELMAN: Off the record.	15	financial or otherwise, in its outcome.
16	(A recess was taken.)	16	IN WITNESS WHEREOF, I have hereunto set my hand
17	Q I have no further questions. Thank you,	17	and affixed my notarial seal this 31st day of
18	Dr. Shapiro.	18	October, 2018.
19	A Okay.	19	My commission expires: June 2, 2022
20	Q Dr. Shapiro, you have the right to read	20	
21	and sign your deposition.	21	
22	A I'll read and sign it.	22	
23	(Off the record at 10:38 a.m.)	23	
24		24	NOTARY PUBLIC IN AND FOR
25		25	THE STATE OF NEW YORK